

**PETITION FOR WITHDRAWAL OF ABANDONMENT UNDER 37 CFR 1.181(a) AND
ALTERNATIVE PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

First named inventor : Katsumi Ochiai

App. No. : 10/795,765

Filed : March 8, 2004

Title : REMOTE CONTROL
SYSTEM FOR MARINE
DRIVE

Examiner : Edwin L. Swinehart

Group Art Unit: 3617

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

March 13, 2008

(Date)

/Michael Guiliana/

Michael A. Guiliana, Reg. No. 42,611

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

The above-identified application may have fallen abandoned for failure to file a timely and proper Request for Continued Examination (RCE) with the response filed on February 22, 2008 in response to the Office Action mailed on August 22, 2008, which set a three month period for response. The abandonment date of this application would be February 22, 2008 (i.e., the expiration of the date of the period set for response, plus any extensions of time obtained therefore).

**APPLICANT HEREBY PETITIONS FOR WITHDRAWAL OF ANY ABANDONMENT OF THIS
APPLICATION UNDER 37 CFR 1.181(a)**

Applicant hereby requests withdrawal of the holding of abandonment of the above-identified Application, although the Applicant has not yet been notified of abandonment nor has the Patent Office issues a Notice of Abandonment.

The potential abandonment of the present Application may result from Applicant's Amendment filed February 22, 2008 (copy attached) in response to a Final Office Action dated August 22, 2007. Applicant's February 22, 2008 response did not include an express Request for Continued Examination (RCE). Rather, Applicant's response included a Conditional RCE.

MPEP § 706.07(a), ¶ III (C) (page 700-98, 8th ed., rev. 5) indicates that the Patent Office will treat a “conditional” RCE as if an RCE had been filed. In particular, the MPEP states:

If a submission is accompanied by a "conditional" RCE and payment of the RCE fee under 37 CFR 1.17(e) **(i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered)**, the Office will treat the "conditional" RCE and payment as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed.

MPEP § 706.07(a), ¶ III (C) (emphasis added).

Applicant notes that this appears to be the only mention of a “Conditional RCE” in the entire MPEP. There is no definition of what constitutes a “Conditional” RCE. However, this section appears to give an explanation of an acceptable “Conditional” RCE, as follows:

(i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered)

Applicant submits that this parenthetical, “i.e.” statement does not include *any express relation to an RCE*. It is, however, *conditional*. On the other hand, there are no indications in the MPEP that show the absolute minimum requirements for a “Conditional” RCE. Finally, Applicant notes that the present requirements for filing RCEs are entirely formalistic. Thus, Applicant submits that the MPEP, by way of this example, allows flexibility in the wording of a conditional RCE and allows for authorizations to deduct fees from deposit accounts to be a “Conditional” RCE.

Applicant’s February 22, 2008 Amendment included an express authorization for the Office to deduct ANY fees, from Deposit Account No. 11-1410. Thus, Applicant’s statement satisfies the requirement of authorization to use a deposit account.

Applicant’s February 22, 2008 Amendment also included the statement that the Office can charge ANY FEES, including any fees for “additional extension of time” from the deposit account. By Applicant’s language, the Office was given broad authorization to deduct fees from the deposit account for ANY purpose, beyond those related to extensions of time.

Applicant’s language is also conditional. As is plain to anyone who reads such responses, Applicant’s statement giving authorization to deduct fees is conditional as to any further fee that

may be required, for example, to prevent abandonment. Otherwise, the Applicant's statement would have no meaning. In the present situation, an RCE is clearly required.

Applicant acknowledges that Applicant's "Conditional" RCE could have been more clear, but also note that the MPEP rule regarding the Conditional RCE could also be more clear.

Thus, Applicant submits that the above-noted language from Applicant's February 22, 2008 response is sufficient to be treated as a "Conditional" RCE.

Applicant thus respectfully requests that any abandonment of the present Application be withdrawn.

IN THE ALTERNATIVE, APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION UNDER 37 CFR 1.137(b)

1. For the Petition fee
(X) Other than small entity - \$1,540, please charge to Deposit Account No. 11-1410.
 2. Reply
 - a. This is a request for a Request for Continued Examination (RCE) under 37 CFR 1.114. For the Request for Continued Examination fee of \$810 under 37CFR 1.17(e),
(X) please charge Deposit Account No. 11-1410.
 - b. The proposed response and extension fees to the above-noted Office Action in the form of an Amendment:
(X) has been filed previously on February 22, 2008.
 3. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.
- (X) Please charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 13, 2008

By: /Michael Guiliana/

Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20,995
(949) 760-0404